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FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

DEC 28 2011  
at 9 o'clock and 15 min. AM  
SUE BEITIA, CLERK

ORIGINAL

Attorneys for Plaintiffs  
PAINTING INDUSTRY OF HAWAII TRUST FUNDS

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

PAINTING INDUSTRY OF HAWAII )	CIVIL NO. 11-00472 DAE / KSC
HEALTH AND WELFARE FUND, by )	
its Trustees, Jimmy Dominguez, Shawn )	
Kurihara, Ray Fujii, Lynn Kinney, )	
Joseph Bazemore, Ronald Hayashi; )	MAGISTRATE JUDGE'S FINDINGS
PAINTING INDUSTRY OF HAWAII )	AND RECOMMENDATION TO
TRAINING FUND, by its Trustees, )	ENTER DEFAULT JUDGMENT
Jimmy Dominguez, Kenneth Zelinsky, )	AND AWARD DAMAGES AGAINST
Ray Fujii, Lynn Kinney, Joseph )	DEFENDANT A&J PAINTING, LLC
Bazemore, Ronald Hayashi; )	
PAINTING INDUSTRY OF HAWAII )	
ANNUITY FUND, by its Trustees, )	
Jimmy Dominguez, Ronald Yanagi, )	
Ray Fujii, Lynn Kinney, Joseph )	HEARING
Bazemore, Ronald Hayashi; )	DATED: December 12, 2011
PAINTING INDUSTRY OF HAWAII )	TIME: 9:30 a.m.
LABOR-MANAGEMENT )	MAGISTRATE JUDGE:
COOPERATION FUND, by its )	Honorable Kevin S. Chang
Trustees, Jimmy Dominguez, Kenneth )	
Zelinsky, Ray Fujii, Lynn Kinney, )	
Joseph Bazemore, Ronald Hayashi; )	
PAINTING INDUSTRY OF HAWAII )	(Caption continued on next page)
VACATION FUND, by its Trustees, )	
Shawn Kurihara, Michael Mukaida, )	

Ray Fujii, Lynn Kinney, Joseph	)
Bazemore, Ronald Hayashi;	)
PAINTING INDUSTRY OF HAWAII	)
RESERVE BENEFIT FUND, by its	)
Trustees, Michael Mukaida, Geraldine	)
Lee, Ray Fujii, Lynn Kinney, Joseph	)
Bazemore, Ronald Hayashi;	)
PAINTING INDUSTRY OF HAWAII	)
TRADE PROMOTION AND	)
CHARITY FUND, by its Board of	)
Directors, Geri Lee, Glenn Shiroma,	)
Ronald Yanagi,	)
	)
Plaintiffs,	)
	)
vs.	)
	)
A & J PAINTING, LLC, a Hawaii	)
corporation, JOHN DOES 1-10; JANE	)
DOES 1-10; DOE CORPORATIONS	)
1-10; DOE PARTNERSHIPS 1-10;	)
DOE GOVERNMENTAL AGENCIES	)
1-10, DOE TRUSTS 1-10,	)
	)
Defendants.	)
	)

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MAGISTRATE JUDGE’S FINDINGS AND  
RECOMMENDATION TO ENTER DEFAULT JUDGMENT AND  
AWARD DAMAGES AGAINST DEFENDANT A&J PAINTING, LLC

On August 2, 2011, the Plaintiffs PAINTING INDUSTRY OF HAWAII  
HEALTH AND WELFARE FUND; PAINTING INDUSTRY OF HAWAII  
TRAINING FUND; PAINTING INDUSTRY OF HAWAII ANNUITY FUND;  
PAINTING INDUSTRY OF HAWAII LABOR-MANAGEMENT

COOPERATION FUND; PAINTING INDUSTRY OF HAWAII VACATION FUND; PAINTING INDUSTRY OF HAWAII RESERVE BENEFIT FUND; and PAINTING INDUSTRY OF HAWAII TRADE PROMOTION AND CHARITY FUND, collectively known as PAINTING INDUSTRY OF HAWAII TRUST FUNDS (“Trust Funds”) filed this action for specific performance, assumpsit and damages against Defendant A & J PAINTING, LLC (hereinafter “A&J”), alleging that A&J materially breached the “Labor Agreement & Related Documents By and Between Painting and Decorating Contractors Association of Hawaii and International Brotherhood of Painters and Allied Trades Local Union 1791, AFL-CIO” dated February 1, 2008 to January 31, 2013 (hereinafter referred to as “the Agreement”) and related trust agreements entered into by A&J and the Painting Industry of Hawaii Trust Funds. The Trust Funds claimed that A&J failed to submit payments due on monthly contribution reports for the periods of May and June 2011 despite numerous demands by Trust Funds.

The action arises under the Labor-Management Relations Act, 1947, as amended, the Employee Retirement Income Security Act of 1974, and the Multiemployer Pension Plan Amendments Act of 1980. Jurisdiction is founded on questions arising thereunder and more specifically under 29 U.S.C. §§ 1145 and 1132(a) and (f).

Service of process was made on A&J on August 8, 2011, as evidenced by the Proof of Service filed herein on August 10, 2011. On September 2, 2011 default was entered against A&J due to its failure to answer or otherwise defend on the Complaint filed on August 2, 2011.

On October 17, 2011, the Trust Funds filed a Motion for Entry of Default Judgment Against Defendant A&J Painting, LLC, seeking an award of the sum \$50,991.35, which included the principal sum of \$47,704.22, liquidated damages of \$2,385.22, legal fees of \$470.00, costs in the amount of \$409.76, and general excise tax in the amount of \$22.15.

### **FINDINGS OF FACT**

Having reviewed the Trust Funds' Motion for Entry of Default Judgment Against Defendant A&J Painting, LLC, the attached Declarations of Dennis Kawasaki and Jared N. Kawashima and the exhibits thereto, and the record established in this action, the Court finds as follows:

1. On March 18, 2009, A&J entered into the Agreement with the Trust Funds;
2. Each of the Trust Funds was and is an express trust created by a written trust agreement subject and pursuant to 29 U.S.C. § 186 and a multiemployer plan within the meaning of 29 U.S.C. §§ 1002 and 1003. The Trust Funds are third party beneficiaries of the agreements as employee benefit plans for

employees employed by A&J and covered by the Agreement.

3. Under the Agreement, A&J must contribute to the Trust Funds on the twenty-fifth day of each month, sums of money to be held in trust by Plaintiffs as employee benefits for A&J employees. Those contributions are calculated by multiplying the hours worked the previous month by A&J employees by the applicable contribution rates specified in the Agreement.

4. Under the Agreement, A&J promised that if any monthly contributions were past due, A&J would pay liquidated damages in the amount of 5% of the delinquent contributions due to each respective fund or \$10.00, whichever is greater, for each and every month that such contributions are delinquent.

5. Also under the Agreement, A&J further promised that if the Trust Funds brought legal action to enforce those agreements against A&J, A&J would pay for all court costs and reasonable attorney's fees of 25% of the total amount of contributions and damages due.

6. A&J breached the Agreement and is liable to the Trust Funds thereunder by its continuous failure to perform the terms of the Agreement, including: (1) failure to pay the amounts found by the Trust Funds for the periods of May and June 2011; (2) failure to pay the Trust Funds additional liquidated damages and prejudgment interest on late paid report contributions; and (3) failure

to pay the Trust Funds their reasonable attorney's fees and costs incurred in enforcing the terms of the Agreement.

7. A&J has not sought to set aside default in this action.

8. The billing rates for attorneys are (1) partners \$225.00 and (2) associates \$185.00. The billing rate for paralegals is \$95.00.

9. The Court finds that the fees sought by the Plaintiffs of \$492.15 (fees in the amount of \$470.00 and general excise tax in the amount of \$22.15) and that the rates, as previously described, for Plaintiffs' legal fees performing work on this matter are reasonable.

10. The Court finds that the total costs sought by the Plaintiffs of \$409.76 are reasonable.

11. The Court finds that the liquidated damages sought by the Plaintiffs of \$2,385.22 are reasonable.

12. Thus, as of June 30, 2011, there is known to be due, owing and unpaid to the Plaintiffs from Defendant:

1. Contributions (May and June 2011).....	\$47,704.22
2. Liquidated Damages.....	\$ 2,385.22
3. Attorney's Fees .....	\$ 470.00
4. Costs.....	\$ 409.76
5. G.E.T. ....	<u>\$ 22.15</u>
TOTAL	\$50,991.35

**RECOMMENDATION**

IT IS HEREBY RECOMMENDED that Default Judgment be entered in favor of Plaintiff Painting Industry of Hawaii Trust Funds for a money judgment against Defendant A & J PAINTING, LLC, in the amount of \$50,991.35.

DATED: Honolulu, Hawaii, December 27, 2011.

IT IS SO FOUND AND RECOMMENDED:

  
\_\_\_\_\_  
KEVIN S. CHANG  
UNITED STATES MAGISTRATE JUDGE

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Painting Industry of Hawaii Trust Funds, et al. v. A&J Painting, LLC, et al., United States District Court, District of Hawaii, Civil No. 11-00472 DAE/KSC;  
*MAGISTRATE JUDGE'S FINDINGS OF FACT AND RECOMMENDATION TO ENTER DEFAULT JUDGMENT AND AWARD DAMAGES AGAINST DEFENDANT A&J PAINTING, LLC*